



2020/2019(INL)

6.4.2020

DRAFT OPINION

of the Committee on the Internal Market and Consumer Protection

for the Committee on Legal Affairs

with recommendations to the Commission on Digital services act: adapting commercial and civil law rules for commercial entities operating online (2020/2019(INL))

Rapporteur for opinion(*): Dita Charanzová

(Initiative – Rule 47 of the Rules of Procedure)

(*) Associated committee – Rule 57 of the Rules of Procedure

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SUGGESTIONS

The Committee on the Internal Market and Consumer Protection calls on the Committee on Legal Affairs, as the committee responsible, to incorporate the following suggestions into its motion for a resolution:

- A. Whereas the free movement of services, including digital services, is one of the four fundamental freedoms, enshrined in the Treaty on the Functioning of the European Union and is vital to the functioning of the Single Market, enhanced by a greater consumer protection and consumer welfare;
- B. Whereas the report by the Committee on Legal Affairs on “Digital services act: adapting commercial and civil law rules for commercial entities operating online” does not deal with the e-commerce Directive rules which are subject to a report being prepared by the Committee on the Internal Market and Consumer Protection;
- C. Whereas Directives (EU) 2019/770¹ and (EU) 2019/771² on certain aspects concerning contracts for the supply of digital content and digital services and contracts for the sale of goods have only recently been adopted;
 1. Welcomes the “CPC Common Position COVID-19”³ issued by the Commission and the Consumer Protection Cooperation (CPC) authorities of the Member States on the most recent reported scams and unfair practices in relation to the COVID-19 outbreak; calls on all platforms to cooperate with the Commission and the competent authorities to better identify illegal practices, take down scams and asks the Commission to constantly review the common guidelines for the placement and/or sale of items and services of a false, misleading or otherwise abusive content for consumers; believes such guidelines should not only seek to apply Union and national consumer law, but to proactively seek to put in place the means to react to the crisis in the market rapidly;
 2. Welcomes efforts to bring transparency to advertising online and considers that further clarity and guidance is needed as regards professional diligence and obligations for platforms; believes that where advertisers and intermediaries are established in a third country, they should designate a legal representative, established in the Union, who can be held accountable for the content of advertisements, in order to allow for consumer redress in the case of false or misleading advertisements;
 3. Asks the Commission to clarify what sanctions or other restrictions those advertisement

¹ Directive (EU) 2019/770 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the supply of digital content and digital services (OJ L 136, 22.5.2019, p. 1).

² Directive (EU) 2019/771 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the sale of goods, amending Regulation (EU) 2017/2394 and Directive 2009/22/EC, and repealing Directive 1999/44/EC (OJ L 136, 22.5.2019, p. 28).

³ European Commission / Consumer Protection Cooperation (CPC) Network, Common Position of CPC Authorities, “Stopping scams and tackling unfair business practices on online platforms in the context of the Coronavirus outbreak in the EU”.

intermediaries and platforms should be subject to if they knowingly accept false or misleading advertisements; believes that online platforms should actively monitor the advertisements shown on their sites, in order to ensure they do not profit from false or misleading advertisements, including from influencer marketing content which is not being disclosed as sponsored; underlines that advertisements for commercial products and services, and advertisements of a political or other nature are different in form and function and therefore should be subject to different guidelines and rules;

4. While recalling earlier efforts, asks the Commission to further review the practice of End User Licensing Agreements (EULAs) and to seek ways to allow greater and easier engagement for consumers, including in the choice of clauses; notes that EULAs are often accepted by users without reading them; moreover notes that when a EULA does allow for users to opt-out of clauses, platforms may require users to do so at each use;
5. Underlines that EULAs should always make the sharing of all data with third parties optional unless vital to the functioning of the services; asks the Commission to ensure that consumers can still use a connected device for all its primary functions even if a consumer withdraws their consent to share non-operational data with the device manufacturer or third parties;
6. Underlines that the Directive (EU) 2019/770 and Directive (EU) 2019/771 are still to be properly transposed and implemented; asks the Commission to take this into account before taking additional measures;
7. Notes the rise of “smart contracts” based on distributed ledger technologies; asks the Commission to analyse if certain aspects of “smart contracts” should be clarified and if guidance should be given in order to ensure legal certainty for businesses and consumers; asks especially for the Commission to work to ensure that such contracts with consumers are valid and binding throughout the Union; that they meet the standards of consumer law, for example the right of withdrawal under Directive 2011/83/EU⁴; and that they are not subject to national barriers to application, such as notarisation requirements;
8. Stresses that any future legislative proposals should seek to remove current and prevent potentially new barriers in the supply of digital services by online platforms; underlines, at the same time, that new Union obligations on platforms must be proportional and clear in nature in order to avoid unnecessary regulatory burdens or unnecessary restrictions; underlines the need to prevent gold-plating practices of Union legislation by Member States.

⁴ Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council (OJ L 304, 22.11.2011, p. 64).